IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 14965 of 2004(F)

PETITIONER:

K.VELAPPAN NAIR,
KRISHNASREE, THIRUPURAM, KANCHAMPAZHINJI P.O.,
(VIA) POOVAR, NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM.

BY ADV. SRI.T.K.ANANDA PADMANABHAN

RESPONDENTS:
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1. **PRINCIPAL SECRETARY TO GOVERNMENT,**
   GENERAL ADMINISTRATION DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. **DISTRICT COLLECTOR,**
   THIRUVANANTHAPURAM DISTRICT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.14965/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- APPLICATION SUBMITTED BY THE PETITIONER WITH ANNEXURES.

EXT.P2:- COPIES OF THE CO-PRISONER CERTIFICATE AND JAIL CERTIFICATE.

EXT.P3:- COPY OF THE REPORT DT.30.10.02 SUBMITTED BY THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE 1ST RESPONDENT DT. 21.12.02.

EXT.P5:- COPY OF THE DT. 22.12.03. DT.21.12.02.

EXT.P5:- COPY OF THE PETITION DT. 22.12.03 SUBMITTED BY THE PETITIONER.

EXT.P6:- COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DT. 19.1.04.

RESPONDENTS EXHIBITS

EXT.R1(a):- CIRCULAR NO.57183/FFP-B1/93 /GAD DT. 31.12.03.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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W.P.(C).No. 14965 of 2004 (F)

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Dated this the 25th day of July, 2007

J U D G M E N T

The writ petitioner is a freedom fighter and aggrieved by the denial of pension under the Kerala Freedom Fighters Pension Rules, 1971, this writ petition has been filed. The case of the petitioner is that he is a freedom fighter who had actively participated in the freedom struggle during the period 1942-47 organised by the Travancore State Congress. The petitioner joined the State Congress as a volunteer in the year 1942 and participated in the Quit India Movement and its continuing agitations like protest meetings, protest rally and Satyagraha and also worked as propagator of Khadi.

2. According to the petitioner he had suffered much on account of his involvement in the freedom struggle. He was ordered to be arrested and detained as per warrant of arrest issued by the District Magistrate, Thiruvananthapuram, in C.C.No.251/1944, for

his participation in the continued agitation for Quit India Movement and he has got a case that he remained underground for a period of more than one year from 15/04/1944 to 30/06/1945. Subsequently, he was arrested by the police and detained in Kazhakoottam police lockup for more than six months without trial during the period from 25/10/1946 to 02/05/1947 along with senior political leaders for his participation in the protest rally held at Kazhakkoottam, on 25/10/1946, in connection with the Sucheendram firing.

3. Ext.P1 series comprises the application along with annexures submitted by the petitioner for Freedom Fighters' Pension. Apart from producing the required certificates, he has also produced certificates issued by two co-prisoners, Sri.A.Jamal Labba and Sri Madhava Kurup and Ext.P2(2) issued by Sri Somasekharan Nair and also the extract of the Convict Register of prominent freedom fighter Jamal Labba. Even though the application was thus filed, it appears that the District Collector sent a report, Ext.P3, to the Government stating mainly that the

certificates of Sri Jamal Labba and Sri Madhava Kurup are not in proper form and that the petitioner was only aged 15 years at the time of Quit India Movement. Ext.P3 also reveals that as per the report of the Tahsildar, it is revealed that he was a freedom fighter during the period 1942-47 and later he joined the Revenue Department and retired from service as Deputy Collector. Ext.P4 is the order by which his application was rejected by the first respondent. Again he filed a petition to reconsider the same as per Ext.P5 which was also rejected by Ext.P6. Three reasons have been stated in Ext.P6 namely; that the co-prisoners' certificates of Sri.Jamal Labba and Sri Madhava Kurup are not in proper form; that the details of the case in which he was ordered to be arrested was not mentioned and; also that he was having only 15 years of age in 1942.

4. I heard the learned counsel for the petitioner Sri.T.K.Ananda Padmanabhan and the learned Government Pleader.

5. The learned counsel for the petitioner invited my attention to the application, Ext.P1, and the annexures therein and contended that the application and the annexures satisfied all conditions of the scheme, and all particulars to prove his claim have also been stated in the application supported by the other certificates. It is also stated that merely because he was of 15 years of age in 1942, that is not a reason to reject the claim of a *bona fide* freedom figher.

6. Ext.P1 is the application which is submitted in the proper form by the petitioner. Ext.P1(5) is a certificate issued by a prominent freedom fighter, Sri.A.Jamal Labha. The certificate shows that he is a recipient of Central Freedom Fighters' Pension under the Ministry of Home Affairs, as per Order No.312/19/1/Jail 7-4-FF dated 09/10/1974. He had suffered actual imprisonment for more than five years during the freedom struggle and he was lodged in Puthenchandai Police Station, Thiruvananthapuram, and the in Central Jail in Thiruvananthapuram District, during the period from 15/02/1112 to 16/08/1118. He has duly certified

that the petitioner had remained underground for more than six months from 15/04/1944 to 30/06/1945. Ext.P1(6) is the certificate issued by Sri Madhava Kurup, who is also a recipient of Central Freedom Fighters' Pension. It shows that he is a person who had suffered actual imprisonment for more than five years in Central Jail, Poojappura for the period 1114 Kanni (ME) to 1119 Thulam (ME). He has also certified about the fact that the petitioner had remained underground for more than six months from 15/04/1944 to 30/06/1945. Ext.P1(8) is the certificate showing that the records in relation to C.C.No.251/44 of the Chief Judicial Magistrate Court, Thiruvananthapuram, are not available. Ext.P1(9) is a Co-prisoner Certificate issued by Sri M.Ali Kunju Sastry, who was an Ex-MLA of the State. Sri Ali Kunju Sastry is also a holder of Thamrapathra and grantee of State and Central Pension. He had also certified that the petitioner is a *bona fide* freedom fighter, who had also participated in the protest rally at Kazhakoottam on 25/10/1946. Ext.P2(2) is a Co-prisoner Certificate from G.Somasekharan Nair, who was a recipient of Kerala Freedom Fighters' Pension, as per Order

No.R.Dis.65166/85/GE, who has certified about the details regarding the petitioner. Ext.P2(3) is the true extract of the convict register of Central Prison, Thiruvananthapuram, in relation to Sri Jamal Labha.

7. The reasons stated in Ext.P6 that the certificate issued by Sri Jamal Labha and Sri Madhava Kurup are not in proper form, does not appear to be correct. On a perusal it can be seen that all the details have been included in it and evidently no prescribed form is required to be submitted, going by the conditions provided in the Scheme. Further, the approach in such cases cannot be too technical also. Here Ext.P3 will show that the Tahsildar has reported that he is a *bona fide* freedom fighter. Coupled with the certificates produced from prominent freedom fighters it will support the claim of petitioner for pension. Apart from that the petitioner had produced the non availability certificate in respect of C.C.No.251/1944 and, therefore, the reason that he had not given details regarding the warrant of arrest is also not correct. The last reason stated in

Ext.P6 is that he was having only 15 years of age in the year 1942. According to me, the said reason is an absurd one as no fixed aged can be fixed for participation in freedom movement. Students, teachers and people of all walks of life were participating in freedom struggle irrespective of their age. When the report Ext.P3 of the Tahsildar shows that he was a freedom fighter which is supported by other documents discussed above, his claim cannot be objected on the ground that he was of 15 years of age only in the year 1942.

8. The learned counsel for the petitioner, invited my attention to the judgments of this Court in **Mammen v.State of Kerala [1999(2) KLT 472]** and **Ammini Amma v.Union of India [1999(1) KLT SN.27]** and **Sadananda Swamy v.Union of India [2004 (2) KLT Case No.92 SN.76]**, as well as the decision of the Supreme Court in **Gurdial Singh vs.Union of India and others [(2001) 8 SCC 8]** to contend for the position that the applications cannot be rejected for technical reasons. In

Mammen's case, in para 3, this Court was pleased to hold as follows:-

> "Initially the pension was granted only to those whose annual income did not exceed Rs.5,000/-. Much later the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour where it was necessary, and also to mitigate the sufferings of those who had given their all for the country in the hour of its need. Perhaps, many of those refused to take the benefit of the scheme on the ground that they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The laudable object of the scheme is to assist and honour the needy and acknowledge the valuable sacrifices made by these patriotic personalities. It cannot be considered as a compensation or a price for their patriotic role in the Independence Movement."

9. In 2001 (8) SCC 8, the Hon'ble Supreme Court has delineated the approach to be made by authorities in dealing with the application and the standard of proof required in such cases:-

6. The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Keeping in mind the object of the Scheme, the authorities concerned are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country.

7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be

covered by the Scheme had suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

Going by the dictum laid down in the above cases, the approach made by the authorities in this particular case is hyper technical and the objections raised are immaterial. The petitioner had produced all the required certificates and the approach made to reject such a claim is really unscientific. A freedom fighter is entitled for pension and the scheme is a beneficial one which has to be construed not in a technical manner. In this case the claim of the petitioner is amply established by the certificates, Ext.P1

series. The same is supported by the report of the Tahsildar, mentioned in Ext.P3. It is therefore a clear case where the claim is proved by cogent evidence. The certifiers are prominent freedom fighters, who themselves are recipients of Freedom Fighters Pension. The orders impugned are issued without any application of mind also. Therefore, I quash Exts.P4 and P6. It is declared that the petitioner has satisfied all the requirements for grant of pension and there will be a direction to the respondents to sanction the same and disburse the benefits within a period of three months from the date of receipt of a copy of this judgment.

T.R.RAMACHANDRAN NAIR,
Judge

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